

ACF

**Administration
for Children and
Families**

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth, and Families**

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PROGRAM INSTRUCTION

- TO:** State and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act
- SUBJECT:** Title IV-E State Plan Amendments – The Deficit Reduction Act of 2005.
- REFERENCES:** Title VII of the Deficit Reduction Act of 2005 (DRA); Section 472 and Section 473 of the Social Security Act (the Act); Section 406(a) and Section 407 of the Act (as in effect on July 16, 1996); 45 Code of Federal Register (CFR) 233.90(c)(1)(v)(B); 45 CFR 1356.21(k) and (l); ACYF-CB-IM-04-03 and ACYF-CB-IM-06-02.
- PURPOSE:** The purpose of this Program Instruction (PI) is to provide guidance on the effective dates of the new provisions in Title IV-E of the Act that were authorized by the DRA, discuss the implications of the dates for submitting claims for Federal Financial Participation (FFP) and transmit a Title IV-E State Plan Pre-Print, which incorporates the new statutory provisions.
- INFORMATION:** The DRA, Public Law (P.L.) 109-171, amended Section 472 and Section 473 of the Act, which govern the Federal Foster Care Maintenance Payments and Adoption Assistance Programs, respectively. A discussion of the amendments, guidance on the effective dates for implementation and FFP and instructions for modifying the Title IV-E state plan follow.

Statutory Provisions

Administrative costs for children in unallowable facilities and relative homes. P.L.109-171 has added Section 472(i) to Title IV-E of the Act to allow a State to claim allowable administrative

costs under limited circumstances. If a child is removed from the home of a specified relative and placed into foster care in accordance with Section 472(a) of the Act, the State is permitted to claim FFP for administrative costs:

- For the lesser of 12 months or the average length of time it takes the State to issue a license or approval of the home when the child, otherwise Title IV-E eligible, is placed in the home of a relative who has an application pending for a foster family home license or approval, or
- For not more than one calendar month for an otherwise Title IV-E eligible child transitioning from an unlicensed or unapproved facility to a licensed or approved foster family home or child care institution.

If a child is a candidate for foster care in accordance with Section 472(i) and is potentially eligible for Title IV-E, the State is permitted to claim FFP for allowable administrative costs when:

- Reasonable efforts are being made to prevent the removal of the child from the home or, if necessary, to initiate efforts for the removal via a voluntary placement agreement or judicial determination. FFP for administrative costs listed at 45 CFR 1356.60(c) may be claimed regardless of whether the child is actually placed in foster care and becomes a recipient of Title IV-E foster care benefits; and
- The State agency has documented at least every six months that the child is at imminent risk of removal from the home.

Clarification of Foster Care Maintenance Payments Eligibility Criteria. The law has revised Section 472(a) of the Act to clarify that for Title IV-E foster care eligibility a child must be eligible for Aid to Families with Dependent Children (AFDC) (as in effect July 16, 1996) in the specified relative's home from which the child is removed pursuant to a voluntary placement agreement or judicial determinations to the effect that continuation in the removal home is contrary to the child's welfare and reasonable efforts are made to prevent removal. If the child is not AFDC eligible in the specified relative's home from which voluntarily or judicially removed and placed into foster care, the child is ineligible for Title IV-E for the duration of the child's foster care episode. The law, as amended, governs all States including those in the Ninth Circuit.

Adoption Assistance Eligibility Criteria. The law has revised Section 473(a)(2) of the Act to clarify that for Title IV-E adoption assistance eligibility, States must determine whether a child meets the AFDC eligibility criteria (as existed July 16, 1996) at the time of the child's removal from the home of the specified relative from whom removed pursuant to a voluntary placement agreement or judicial determination to the effect that continuation in the removal home is contrary to the child's welfare. States may not determine the child's AFDC eligibility again at the time of the initiation of adoption proceedings.

Effective Dates for Implementation and FFP

Administrative costs claimed in accordance with provisions of the DRA and this PI must be included in the State's cost allocation plan and approved by the U.S. Department of Health and Human Services (HHS) Division of Cost Allocation.

Title IV-E administrative cost claims for children placed in unlicensed foster care settings. States may claim FFP for the allowable administrative costs for an otherwise Title IV-E eligible child placed in foster care with a relative whose foster family home's application for licensure (or approval) was pending on or after February 8, 2006. The period for claiming begins February 2006 for a child living in a relative's home that meets these conditions and extends to a period not to exceed that specified in Section 472(i)(1)(A). The average length of time necessary to license foster family homes is defined by the States' laws and policies; however, States may not claim FFP for allowable administrative costs for any period of time beyond 12 months from the month in which the relative's application for licensure is submitted. The State's average length of time to license all foster family homes and the methodology used to calculate the average must be reported by the State to the ACF Regional Office within 60 days of issuance of this PI.

States may also claim FFP for one calendar month beginning February 2006 for an otherwise Title IV-E eligible child who has moved on or after February 8, 2006, from an unlicensed, unapproved, or otherwise unallowable Title IV-E facility to a licensed foster care facility in accordance with Section 472(i)(1)(B). Allowable administrative costs may be claimed for the calendar month in which the child is in the unlicensed or unapproved facility that immediately precedes the child's move to a licensed facility.

The law supersedes ACYF-CB-PI-02-08, which permitted States to claim FFP for the administrative costs associated with an otherwise Title IV-E eligible child placed in an unlicensed foster family home. Now States may claim allowable administrative costs under Title IV-E for children placed in unlicensed relative foster family homes only if the criteria in Section 472(i)(1) are met. Title IV-E administrative costs expended on behalf of otherwise eligible children placed in unallowable facilities pursuant to ACYF-CB-PI-02-08 on or after February 8, 2006, must be identified and appropriate decreasing adjustments made on a State's Title IV-E Foster Care and Adoption Assistance Financial Report (form ACF-IV-E-1) and submitted to the Administration for Children and Families (ACF). States may calculate their adjustments from March 1, rather than the statutory date of February 8.

Title IV-E administrative cost claims for candidates for foster care. States may begin claiming for allowable administrative functions performed on behalf of foster care candidates in the calendar month the child's candidacy is initially determined. States may not claim FFP for Title IV-E administrative functions performed in the month(s) prior to the documentation of candidacy because a child is not a candidate for foster care until determined as such pursuant to Section 472(i) of the Act and Section 8.1 of the Federal Child Welfare Policy Manual.

Beginning February 8, 2006, for any foster care candidate, the State agency must redetermine the child's candidacy at least every six months until it determines, at any point prior to the removal, that the child is no longer a foster care candidate. Children who were determined to be foster care candidates as of February 28, 2006, must have a redetermination of their candidacy completed by August 31, 2006, and every six months thereafter. States may claim allowable administrative costs only if all criteria in Section 472(i)(2) are met, which includes documentation that the child is at imminent risk of removal from the home.

Foster Care Maintenance Payments Eligibility Criteria. Children who were determined Title IV-E eligible only as a result of the *Rosales* decision are not eligible for Title IV-E foster care maintenance payments. The DRA, enacted on February 8, 2006, clarified ACF's longstanding position that in order to be eligible for Title IV-E foster care maintenance payments, a child must be AFDC-eligible in the home from which he was removed. Accordingly, all States, including those under the jurisdiction of the Ninth Circuit Court of Appeals, must determine a child's AFDC eligibility based on the specified relative's home from

which the child is voluntarily or judicially removed and not on the criteria stated in the *Rosales v. Thompson* court decision.¹ After the Federally-prescribed effective date for State implementation, a child cannot be newly eligible for Title IV-E foster care if the child's AFDC eligibility is determined pursuant to the *Rosales* decision.

For children who were judicially permitted to be determined AFDC-eligible only as a result of the *Rosales* decision prior to the Federal date for State implementation of the amended statutory provisions, we will permit eligibility for Title IV-E foster care maintenance payments to continue through the month when the child's next annual redetermination of AFDC eligibility is due. States may claim Title IV-E funds accordingly. After the due month of the redetermination, States will not be permitted to receive Title IV-E foster care payments for the children determined eligible only as a result of the *Rosales* decision, in accordance with Section 472(a) of the Act as amended.

States need not alter their redetermination schedule. However, if redeterminations are not held timely (i.e., at least every 12 months) for children determined AFDC eligible pursuant to *Rosales*, the children will not be eligible for Title IV-E foster care maintenance payments beginning the month following the month when the last redetermination is due. Title IV-E costs claimed on behalf of such children subsequent to the redetermination month must be identified and appropriate decreasing adjustments must be made on a State's form ACF-IV-E-1.

Adoption Assistance Eligibility Criteria. A child whose adoption has been finalized on or after October 1, 2005, must meet all of the criteria in Section 473(a)(2), as amended, to be eligible for Title IV-E adoption assistance.

State Plan Submission

¹ The Federal District Court for the Eastern District of California has ordered that statutory provisions in Section 472(a) of the Act, as amended, take effect June 9, 2006, rather than February 8, 2006, for the State of California. June 9, 2006, is the issuance date of ACYF-CB-IM-06-02, which instructed States on the implementation of the DRA. Following the Court's reasoning, ACF has determined that the effective date of June 9, 2006, will apply to all states in the Ninth Circuit affected by the *Rosales v. Thompson* decision.

Each State must submit to ACF a revised Title IV-E State Plan Pre-Print amendment that reflects the new Title IV-E statutory requirements. In completing the amendment, States must record the applicable State statutory, regulatory or policy references and citations for the affected Federal requirement. States may submit their Title IV-E State Plan amendment using the attached pages (see Enclosure), or may use the electronic version found at the Children's Bureau web page at <http://www.acf.dhhs.gov/programs/cb>. The attached pages show the new statutory provisions highlighted in yellow. States may use a different format, provided that the format used includes all of the applicable Title IV-E State plan requirements of the Act as set forth in the new law. If a State chooses to use its own format, it must include all applicable State statutory, regulatory or policy references and citations for each requirement.

States must submit the completed State Plan Pre-Print to the appropriate ACF Regional Administrator for approval 120 days from the date of this issuance. State compliance with all statutory and regulatory provisions continues to be mandatory, regardless of the approval status of the State Plan amendment. Please note that the State Plan amendment must be submitted electronically or on a compact disk. Where States are unable to submit electronic signatures for purposes of certification, they may submit the appropriate pages with original signatures. In addition, States must submit copies of referenced material to document compliance for any cited statute, regulation, policy and procedure.

INQUIRIES:

Direct inquiries to ACF Regional Administrators, ACF Regions I - X.

/s/

Joan E. Ohl
Commissioner
Administration on Children, Youth
and Families

Enclosure - Amended Pages in the Title IV-E State Plan Pre-Print